AMENDED IN ASSEMBLY APRIL 18, 2002

AMENDED IN ASSEMBLY JANUARY 9, 2002

AMENDED IN ASSEMBLY JUNE 27, 2001

AMENDED IN SENATE JUNE 6, 2001

AMENDED IN SENATE MAY 3, 2001

AMENDED IN SENATE APRIL 19, 2001

SENATE BILL

No. 489

Introduced by Senator Romero

(Coauthors: Assembly Members Alquist, Kehoe, La Suer, and Salinas)

February 22, 2001

An act to add Article 6.6 (commencing with Section 25169.5) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

- SB 489, as amended, Romero. Extremely dangerous hazardous *Hazardous* waste *of concern*: handling: transportation.
- (1) Under existing law, it is unlawful for any person to carry on, or engage in, the transportation of hazardous waste unless the person holds a valid registration issued by the Department of Toxic Substances Control. Existing law provides that a person who holds a valid registration issued by the department is a registered hazardous waste transporter. Existing law requires any person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, to

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complete a manifest prior to the time the waste is transported or offered for transportation and to submit the manifest to the department. Existing law requires any application to use and operate a hazardous waste facility to include a specified disclosure statement, but exempts from this requirement a person operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

A violation of the laws regulating hazardous waste is a crime.

This bill would require the department, prior to March 1, 2002 by July 1, 2003, to adopt a list of extremely dangerous hazardous wastes of concern, which would include hazardous wastes waste that the department—considers to be potentially explosive or incendiary hazardous waste or any hazardous waste that could be used for the ehemical or biological contamination of air or water determines requires special handling restrictions and requirements as specified, based on its potential to be used as a weapon of mass destruction.

The bill would require any person handling or transporting extremely dangerous hazardous waste of concern on and after March 1, 2002, July 1, 2003, to comply with various requirements, including requiring a registered hazardous waste transporter or the owner or operator of a hazardous waste facility who discovers that any amount of an extremely dangerous hazardous waste of concern is missing during transportation or storage to immediately notify the department and to later report the discrepancy to the department in writing. The bill would require the department to notify the Department of the California Highway Patrol if the department determines that any extremely dangerous hazardous waste of concern reported is missing and presents a potential risk to public safety. The bill would authorize the Department of the California Highway Patrol to investigate a hazardous waste facility, upon the department's request, for a criminal investigation regarding missing hazardous waste.

The bill would also require any person loading, transferring, or unloading extremely dangerous hazardous waste *of concern* to monitor those operations using electronic video surveillance, as specified, and would require a registered hazardous waste transporter to lock secure the cargo portion of any vehicle transporting extremely dangerous hazardous waste *of concern* during the transportation of those hazardous wastes in the state.

The bill would require any person applying for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility that would handle extremely dangerous

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hazardous waste of concern, or a person applying for registration as a hazardous waste transporter who would transport that waste, to submit a disclosure statement to the department. The bill would also require any person owning or operating a hazardous waste facility that handles an a extremely dangerous hazardous waste of concern and any registered hazardous waste transporter who transports extremely dangerous hazardous waste of concern to annually submit a disclosure statement to the department by July 1, 2003, and upon the request of the department thereafter. The department would be required to conduct a background check, as defined, on or before 90 180 days after receiving a disclosure statement.

The bill would require the department to adopt emergency regulations, prior to March 1, 2002 July 1, 2003, to implement the bill's requirements and would provide require that the regulations would be filed with, but not be repealed by, the Office of Administrative Law and remain in effect until revised by the department. The bill would require the regulations to be consistent with the federal Hazardous Materials Transportation Authorization Act of 1994, except as specified.

Since a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 6.6 (commencing with Section 25169.5) is added to Chapter 6.5 of Division 20 of the Health and Safety 3 Code, to read:

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- 5 Article 6.6. Extremely Dangerous Hazardous Waste and
- 6 Article 6.6. Hazardous Waste of Concern and Public Safety

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1 Act

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25169.5. For purposes of this article, the following definitions shall apply:

(a) "Background check" means a determination by the department as to whether any person submitting a disclosure statement pursuant to this article has been named as a party in any action involving violation of any state or federal statute or regulation, excluding civil and administrative penalties of one thousand dollars (\$1,000) or less, and whether a conviction, judgment, or settlement has been entered during a three-year period preceding the date of the disclosure statement. The criminal history background check obtained from fingerprints submitted by the person identified in the disclosure statement. The background check shall include any previous name or names of the person submitting the disclosure statement, or, if the person submitting the disclosure statement, as defined in Section 25112.5, is a business concern, any officer, director, or partner of the business concern. The background check shall list all convictions, judgments, and settlements relating to violations of any statutes or regulations, excluding civil and administrative penalties of one thousand dollars (\$1,000) or less. The background check shall separately list all criminal convictions and those violations resulting in penalties of fifty thousand dollars (\$50,000) or more. For purposes of conducting a background check, the department may use criminal history information obtained from the Department of Justice to the extent that the information is necessary to list all convictions, judgments, and settlements. In conducting a background check, the department may contact the district attorney, local agencies, the Attorney General, the United States Department of Justice, the federal Environmental Protection Agency, or other agencies outside of the state that have, or have had, regulatory or enforcement jurisdiction over the person submitting the disclosure statement in connection with any hazardous waste or hazardous materials activities.

(b) "Extremely dangerous hazardous waste" means a hazardous waste that is listed as an extremely dangerous hazardous waste by the department pursuant to Section 25169.6. department shall submit the fingerprints to the Department of Justice, which shall, in turn, submit the fingerprints to the Federal Bureau of

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Investigation to obtain a state and national criminal record history check. Fingerprints may be obtained using the Department of Justice's electronic fingerprint network.

(b) "Hazardous waste of concern" means a hazardous waste listed as a hazardous waste of concern by the department pursuant to Section 25169.6.

25169.6. On or before July 1, 2003, the department shall adopt by regulation, and revise when appropriate, a list of hazardous wastes of concern. The list shall include, at a minimum, any hazardous waste that the department determines requires special handling restrictions and requirements, beyond those restrictions and requirements generally applicable to hazardous wastes, because of the potential for a hazardous waste of concern to be intentionally and effectively used as a weapon of mass destruction.

25169.7. On and after July 1, 2003, all of the following

25169.6. Prior to March 1, 2002, the department shall adopt a list of those extremely dangerous hazardous wastes that the department considers to be potentially explosive or incendiary hazardous waste or any hazardous waste that could be used for the chemical or biological contamination of air or water, including the amount at which that hazardous waste presents a potential threat to public safety. The department shall include, at a minimum, any hazardous waste that meets the definition of extremely hazardous waste, as specified in Section 25115.

25169.7. On and after March 1, 2002, all of the following requirements, including any regulations adopted by the department pursuant to Section 25169.8, shall apply to any person handling or transporting an extremely dangerous hazardous waste: handling any hazardous waste of concern:

- (a) (1) If a registered hazardous waste transporter or the owner or operator of a hazardous waste facility discovers that any amount of an extremely dangerous hazardous waste is missing amount of any waste of concern is missing during transportation or storage, the hazardous waste transporter or the owner or operator shall immediately notify the department and report the discrepancy to the department in writing by letter within five days after the shipment.
- (2) If the department determines that any extremely dangerous hazardous waste hazardous waste of concern reported pursuant to paragraph (1) is missing and presents a potential risk to public

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safety, the department shall notify the Department of the California Highway Patrol.

- (3) The Department of the California Highway Patrol may inspect any hazardous waste facility at the department's request, to perform a criminal investigation of any missing hazardous waste.
- (b) Any person loading, transferring, or unloading extremely dangerous hazardous waste hazardous waste of concern shall monitor those operations using electronic video surveillance. The person shall maintain those electric images, and make them available to the department, for at least 30 days following the successful completion of the transportation of that extremely dangerous hazardous waste.
- (c) A registered hazardous waste transporter shall lock *secure* the cargo portion of any vehicle transporting extremely dangerous hazardous waste *hazardous waste of concern* during the transportation of that hazardous waste in the state.
- (d) (1) Notwithstanding Section 25200.4, any person applying for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility that would handle extremely dangerous hazardous waste shall submit would handle hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.
- (2) Prior to March 1, 2002, and on or before March 1 annually thereafter, any person owning or operating a hazardous waste facility that handles an extremely dangerous hazardous waste shall
- (2) On or before July 1, 2003, and after July 1, 2003, at any time upon the request of the department, any person owning or operating a hazardous waste facility that handles any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.
- (3) Any person applying for registration as a hazardous waste transporter who will transport extremely dangerous hazardous waste hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.
- (4) Prior to March 1, 2002, and on or before March 1 annually thereafter, any registered hazardous waste transporter who transports extremely dangerous hazardous waste shall submit to

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(4) On or before July 1, 2003, and after July 1, 2003, at any time upon the request of the department, any registered hazardous waste transporter who transports any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

- (5) Whenever any change pertaining to the information required to be contained in a disclosure statement filed pursuant to paragraph (3) or (4) occurs after the date of the filing of the disclosure statement, the transporter shall provide the updated information in writing to the appropriate agency within 30 days of the change.
- (6) On or before 90 180 days after receiving a disclosure statement pursuant to this subdivision, the department shall conduct a background check, based on the information provided in the disclosure statement.

25169.8. (a) Prior to March 1, 2002, the department shall 25169.8. (a) On or before July 1, 2003, the department shall

25169.8. (a) On or before July 1, 2003, the department shall adopt emergency regulations to implement this article, with the concurrence of the California Highway Patrol.

- (b) The regulations adopted by the department pursuant to this section shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11349.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department.
- (c) Except as provided in subdivision (d), in adopting regulations pursuant to this section, the department shall ensure that the regulations are consistent with the Hazardous Materials Transportation Authorization Act of 1994 (Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code, and thereafter amended.

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(d) If the department determines that a requirement imposed pursuant to Section 25169.7 could be preempted by the Hazardous Materials Transportation Authorization Act pursuant to Section 5125 of Title 49 of the Code of Federal Regulations, the department shall apply to the Secretary of Transportation for a 5 waiver of preemption pursuant to subsection (e) of Section 5125 of Title 49 of the United States Code.

SEC. 2. No reimbursement is required by this act pursuant to 8 Section 6 of Article XIII B of the California Constitution because 9 10 the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty 12 for a crime or infraction, within the meaning of Section 17556 of 13 the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California 15 Constitution.